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8 *MGM Resorts International and*
Mandalay Resort Group

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 DEBRA L. ROBELLO,

13 Plaintiff,

14 v.

15 MANDALAY CORP. dba MANDALAY BAY
16 RESORT & CASINO, a Nevada Corporation;
17 MANDALAY RESORT GROUP dba
MANDALAY BAY RESORT & CASINO, a
18 Nevada Corporation; MGM RESORTS
INTERNATIONAL dba MANDALAY BAY
19 RESORT & CASINO, a Delaware Corporation;
20 JESSE ESTRADA, an individual,

21 Defendants.

Case No.: 2:14-cv-00456-APG-VCF

**MGM RESORTS INTERNATIONAL
AND MANDALAY RESORT GROUP'S
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT WITH PREJUDICE**

22 Defendants MGM Resorts International ("MGM Resorts"), erroneously sued as MGM
23 Resorts International dba Mandalay Bay Resort & Casino, and Mandalay Resort Group ("MRG"),
24 erroneously sued as Mandalay Resort Group dba Mandalay Bay Resort & Casino (MGM Resorts
25 and MRG are collectively referred to herein as "Moving Defendants"), move to dismiss Plaintiff
26 Debra L. Robello's Complaint. Neither MGM Resorts nor MRG ever did business as Mandalay
27 Bay Resort & Casino. And these parent entities are not liable for alleged wrongdoing of their
28

1 subsidiary. Moreover, Plaintiff failed to exhaust administrative remedies against these Moving
 2 Defendants. For each and all of these reasons, Plaintiff's Complaint against the Moving
 3 Defendants should be dismissed.

4 This Motion is made and based on Federal Rule of Civil Procedure, the attached
 5 Memorandum of Points and Authorities, the exhibits and declarations attached hereto, all
 6 pleadings and documents on file with the Court, and any oral argument this Court deems
 7 appropriate.
 8

9 Dated this 21st day of April, 2014.

10 JACKSON LEWIS P.C.

11
 12 /s/ Elayna J. Youchah
 13 Elayna J. Youchah, Bar No. 5837
 14 Erica J. Kelly, Bar No. 12238
 3800 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169

15 *Attorneys for Defendants*
 16 *MGM Resorts International and*
 17 *Mandalay Resort Group*

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. STATEMENT OF FACTS

20 Plaintiff Debra L. Robello ("Plaintiff") filed her Complaint on March 26, 2014 asserting
 21 four Causes of Action only two of which are asserted against the business entity defendants.
 22 Specifically, a review of Plaintiff's Complaint shows that her First Cause of Action, labeled
 23 Hostile Environment Sexual Harassment in violation of Title VII, identifies Mandalay Bay in
 24 Paragraphs 31, 32, and 34 as an alleged wrongdoer. Plaintiff's Complaint at ¶¶ 31, 32, 34.¹
 25 Plaintiff's Second Cause of Action is labeled Title VII of the Civil Rights Act of 1964 –
 26
 27

28 ¹ A copy of Plaintiff's Complaint is attached hereto for the Court's convenience as Exhibit 1.

1 Retaliation against Mandalay Bay. *Id.* at 6:21-23. In turn, Mandalay Bay is defined in Plaintiff's
 2 Complaint as including Mandalay Corp., MRG, and MGM Resorts International, the last two of
 3 which are identified as doing business as Mandalay Bay Resort and Casino. *Id.* ¶ 2.²

4 In Paragraph 6 of Plaintiff's Complaint, she alleges that "[a]t all relevant times giving rise
 5 to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant Mandalay
 6 Bay." *Id.* In Paragraph 9 of Plaintiff's Complaint, she asserts that she timely filed a Charge of
 7 Discrimination ("Charge") with the U.S. Equal Employment Opportunity Commission ("EEOC"),
 8 and that a right to sue letter was issued by the EEOC on December 27, 2013. Plaintiff attached a
 9 copy of the right to sue letter to her Complaint as Exhibit A. That Exhibit shows a copy of the
 10 right to sue was mailed to Mandalay Corp. d/b/a Mandalay Bay Resort & Casino. Plainly missing
 11 from Exhibit A is notice that the right to sue went to either MGM Resorts or MRG. This is
 12 because Plaintiff's Charge was filed only against Mandalay Corp. *See* Exhibit 2 attached hereto.³
 13 Thus, there was no Charge and no exhaustion of administrative remedies, against the Moving
 14 Defendants.
 15
 16

17 Clark County governmental records show that the only entity doing business as Mandalay
 18 Bay Resort & Casino in Clark County, Nevada, is Mandalay Corp., also a named defendant in
 19 this action. Exhibits 3 and 4 (Records of Fictitious Filing, identifying Mandalay Corp. as the only
 20 entity doing business as Mandalay Bay Resort & Casino since 2009). Further, public record
 21 shows that MGM Resorts is the parent entity that wholly owns MRG. *See* March 3, 2014 MGM
 22 Resorts' SEC 10-K Filing ("SEC Filing"), Exhibit 21, at 2, attached hereto in relevant part as
 23

24
 25 ² In contrast to these two causes of action, Plaintiff's Third and Fourth Causes of Action are
 26 expressly brought against the individually named defendant Jesse Estrada. *Id.* at 8:1-9:18.

27 ³ A court may consider documents attached to a complaint, incorporated by reference or
 28 necessarily relied upon by the plaintiff without converting a motion to dismiss into a motion for
 summary judgment. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *United*
States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

Exhibit 5.⁴ This same filing shows that MRG is the intermediary holding parent company, wholly owning Mandalay Corp. dba Mandalay Bay Resort & Casino. *Id.* MRG and MGM Resorts are distinct, albeit related business entities. *Id.*

II. ARGUMENT

A. **MGM Resorts And MRG Do Not Do Business As Mandalay Bay Resort And Casino And, Therefore, Are Not Proper Defendants In This Case.**

Plaintiff brings her action against two defendants that do not exist. Specifically, the caption and Paragraph 2 of Plaintiff's Complaint identifies Mandalay Bay Resort Group dba Mandalay Bay Resort & Casino, and MGM Resorts International dba Mandalay Bay Resort & Casino. However, only Mandalay Corp. does business as Mandalay Bay Resort & Casino in Clark County, Nevada. Exhibits 3 and 4.⁵ Said succinctly, Mandalay Bay Resort & Casino, Plaintiff's admitted employer, is a dba of Mandalay Corp. and no other entity. *Id.*

As the parent entities of Mandalay Corp., Plaintiff's employer, neither MGM Resorts nor MRG, are liable for the alleged wrong doings of their subsidiaries. *EEOC v. Con-Way, Inc.*, No. CV 06-1337-MO, 2007 U.S. Dist. LEXIS 66727, *4 (D. Or. Sept. 4, 2007) (internal citations

⁴ Moving Defendants request that this Court take judicial notice of the contents of the MGM Resorts International SEC filings. "A district court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC as facts 'capable and accurate and ready determination by resort to sources who accuracy cannot reasonably be questioned.'" *Kramer v. Time Warner, Inc.* 937 F.2d 767, 774 (2nd Cir. 1991)(citation omitted); *see also, Silicon Graphics*, 970 F. Supp. at 758-59 (granting defendants' request for judicial notice of SEC filings in connection with motion to dismiss); *Newport Components, Inc. v. NEC Home Elecs., Inc.*, 671 F. Supp. 1525, 1539 n.16 (C.D. Cal. 1987) (taking judicial notice of annual report on Form 20-9 filed by defendant with the SEC in ruling on defendants' motion to dismiss).

⁵ NRS 602.010 requires an entity or person to report any fictitious business name under which the entity or person owns an interest or is operating with the County Clerk. Here, Mandalay Corp. does business under the fictitious name Mandalay Bay Resort & Casino, which is registered, and has been registered with Clark County since at least 2009. Exhibits 3 and 4. Moving Defendants ask the Court to take judicial notice that Mandalay Corp. is the only business doing business as Mandalay Bay Resort & Casino since 2009. Fed. R. Evid. 201(b). *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992,998-99 (9th Cir. 2010) (taking judicial notice of official information posted on a governmental website, the accuracy of which was undisputed).

omitted) ("[b]usinesses are allowed to incorporate and thereby isolate liabilities among separate entities... This concept of limited liability creates a strong presumption that a parent or affiliated company is not liable for employment violations of its subsidiary or affiliate"). Indeed, Plaintiff is only entitled to the protections of Title VII if she was and/or is an MGM Resorts employee or MRG employee. *Murray v. Principal Fin. Group, Inc.*, 613 F.3d 943, 944 (9th Cir. 2010).

Given the undisputed facts that (1) neither MGM Resorts nor MRG ever did business as Mandalay Bay Resort & Casino, (2) MGM Resorts and MRG are only the ultimate parent and holding company related to Mandalay Corp., (3) Plaintiff's Charge was filed only against Mandalay Corp., which is the only name entity that did do business as Mandalay Bay Resort & Casino, and (4) Plaintiff was an employee of Mandalay Bay Resort & Casino, there is no legally cognizable basis for Plaintiff's Complaint against either of the Moving Defendants. *Murray*, 613 F.3d at 946; *see also Fox v. Sysco Corp.*, Case No. 2:11-cv-00424-RLH-PAL, 2011 U.S. Dist. LEXIS 134537, *4-6 (D. Nev. Nov. 21, 2011) (dismissing defendant because parent/subsidiary relationship is insufficient to establish liability under Title VII). For these reasons alone, the Moving Defendants should be dismissed from Plaintiff's Complaint.

B. Plaintiff Did Not Exhaust Her Administrative Remedies Against Moving Defendants.

Even assuming, *arguendo*, that Plaintiff could establish she was an employee of MGM Resorts or MRG, which she cannot, the Court should dismiss Moving Defendants from the Complaint because Plaintiff did not exhaust her administrative remedies against either of these defendants.

While Title VII's provisions expressly grant district courts jurisdiction over claims brought under the statute (42 U.S.C. § 2000e-5(f)), a party must first exhaust his/her administrative remedies before such a claim may be heard by a federal court. That is, exhaustion of administrative remedies in a Title VII case is a condition precedent to filing suit in federal

1 court. *Martinez v. Victoria Partners*, Case No. 2:12-cv-502-JAD-VCF, 2014 U.S. Dist. LEXIS
2 41043, *11-12 (D. Nev. March 27, 2014); *Stache v. International Union of Bricklayers*, 852 F.2d
3 1231, 1233 (9th Cir. 1988); *see also Sommatino v. United States*, 255 F.3d 704, 708 (9th Cir.
4 2001) ("[a] number of our circuit cases have also held that the administrative exhaustion
5 requirements under Title VII are not jurisdictional but are conditions precedent to filing an action
6 which a defendant may waive or be estopped from asserting").

7
8 If a plaintiff has not exhausted her administrative remedies by filing a timely Charge with
9 the EEOC or the appropriate state agency, her claim fails as a matter of law. *Freeman v. Oakland*
10 *Unified School Dist.*, 291 F.3d 632, 636 (9th Cir. 2002); *B.K.B. v. Maui Police Dep't*, 276 F.3d
11 1091, 1099 (9th Cir. 2002) (same); *Eigeman v. Peppermill Casinos, Inc.*, Case No. 3:11-cv-219-
12 RCJ-RAM, 2011 U.S. Dist. LEXIS 102095, *6-7 (D. Nev. Sept. 9, 2011) (dismissing lawsuit
13 with prejudice because plaintiff failed to exhaust her administrative remedies). The
14 administrative requirement serves the important purpose of giving the charged party notice of the
15 claim and narrowing the issues for prompt adjudication and decision. *B.K.B.*, 276 F.3d at 1099.
16 Thus, absent extraordinary circumstances, Title VII claimants "may only sue [parties] named in
17 the EEOC charge because only those [parties] named had an opportunity to respond to the
18 charges during the administrative proceedings." *Sosa v. Hiraoka*, 920 F.2d 1451, 1458 (9th Cir.
19 1990).

20
21 In this case, Plaintiff filed a Charge against Mandalay Corp. dba Mandalay Bay Resort &
22 Casino, the proper defendant in this case. Exhibit 2. No Charge was ever filed against the
23 Moving Defendants. *Id.* Likewise, a right to sue letter was issued only as to Mandalay Corp.
24 Plaintiff's Exhibit A. Under these circumstances, it is clear that Plaintiff failed to timely exhaust
25 her administrative remedies as to the Moving Defendants. As such, Plaintiff's claim must be
26 dismissed. *Freeman*, 291 F.3d at 636; *EEOC v. Pioneer Hotel, Inc.*, Case No. 2:11-cv-1588-
27
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1 LRH-RJJ, 2012 U.S. Dist. LEXIS 63553, *8 (D. Nev. May 4, 2012) (dismissing parent company
2 with prejudice because it "was not named in the charge of discrimination and charging party ...
3 was not employed by [the parent] in any capacity.").

4 **III. CONCLUSION**

5 For the reasons set forth above, MGM Resorts International and Mandalay Resort Group
6 respectfully requests that they be dismissed from this matter in its entirety with prejudice.
7

8 Respectfully submitted this 21st day of April, 2014.

9 JACKSON LEWIS P.C.

10
11 /s/ Elayna J. Youchah

12 Elayna J. Youchah, Bar No. 5837
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15 *MGM Resorts International and*
16 *Mandalay Resort Group*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jackson Lewis P.C. and that on this 21st day of April, 2014, I caused to be served via ECF filing a true copy of **MGM RESORTS INTERNATIONAL AND MANDALAY RESORT GROUP'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE** to:

Michael P. Balaban, Bar No. 9370
Law Offices of Michael P. Balaban
10726 Del Rudini Street
Las Vegas, Nevada 89141
Tel: (702) 586-2964

Attorney for Plaintiff Debra L. Robello

/s/ Emily Santiago
Employee of Jackson Lewis P.C.

EXHIBIT 1

EXHIBIT 1

1 Michael P. Balaban State Bar No. 9370
2 LAW OFFICES OF MICHAEL P. BALABAN
3 10726 Del Rudini Street
4 Las Vegas, NV 89141
5 (702)586-2964
6 Fax: (702)586-3023

7 Attorney for Plaintiff

8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 DEBRA L. ROBELLO,

12
13 Plaintiff,

14 vs.

15
16 MANDALAY CORP. dba MANDALAY BAY
17 RESORT & CASINO, a Nevada Corporation;
18 MANDALAY RESORT GROUP dba
19 MANDALAY BAY RESORT & CASINO, a
20 Nevada Corporation; MGM RESORTS
21 INTERNATIONAL dba MANDALAY BAY
22 RESORT & CASINO, a Delaware Corporation;
23 JESSE ESTRADA, an individual,

24 Defendants.

) CASE NO.

) COMPLAINT FOR DAMAGES AND OTHER
) RELIEF BASED UPON:

1. HOSTILE ENVIRONMENT SEXUAL
HARASSMENT
2. RETALIATION
3. ASSAULT AND BATTERY
4. INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS

) JURY DEMAND

25 Plaintiff DEBRA L. ROBELLO ("Plaintiff" or "Robello") alleges as follows:

26 **JURISDICTION AND VENUE**

27 1. This action is brought pursuant to the provisions of Title VII of the Civil Rights Act
28 of 1964, 42 USC §2000e, et seq. (hereinafter "Title VII") to obtain relief for Plaintiff Robello for

1 discriminating against her, harassing her and retaliating against her, on the basis of her sex
2 (female) in the terms, conditions or privileges of her employment.

3 2. At all relevant times, Defendants MANDALAY CORP. dba MANDALAY BAY
4 RESORT & CASINO, a Nevada Corporation; MANDALAY RESORT GROUP, dba
5 MANDALAY BAY RESORT & CASINO, a Nevada Corporation; and MGM RESORTS
6 INTERNATIONAL dba MANDALAY BAY RESORT & CASINO, a Delaware Corporation
7 (hereinafter "Mandalay Bay" or "Defendant Mandalay Bay") employed more than fifteen (15)
8 employees, and they are therefore subject to the provisions of Title VII.

9 3. Jurisdiction is predicated under these code sections as well as 28 USC §1331, as
10 this action involves a federal question. The state law claims for assault and battery and intentional
11 infliction of emotional distress are predicated on the supplemental jurisdiction of the court
12 pursuant to 28 USC §1367(a).

13 4. The events or omissions giving rise to Plaintiff's claim occurred in this judicial
14 district, thus venue is proper here pursuant to 28 USC §1391(b)(2), and the ends of justice so
15 require.
16

17 PARTIES

18 5. Plaintiff, Robello is a citizen of the United States and a resident of the State of
19 Nevada, County of Clark and City of Las Vegas.

20 6. Plaintiff is informed and believes and thereon alleges that at all relevant times
21 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant
22 Mandalay Bay.

23 7. Mandalay Bay is an employer within the meaning of 42 USC §2000e(b).

24 8. Plaintiff is informed and believes and thereon alleges that Estrada is a citizen of the
25 United States and a resident of the State of Nevada, County of Clark and City of Las Vegas.

26 EXHAUSTION OF REMEDIES

27 9. Plaintiff timely filed a "Charge of Discrimination" with the Equal Employment
28 Opportunity Commission ("EEOC") and was issued a Notice of Right to Sue by the EEOC on

December 27, 2013, a copy of which is attached to complaint as Exhibit "A".

STATEMENT OF FACTS

10. On or around September 2001 Plaintiff was hired to work at Mandalay Bay as a banquet bartender and currently works at Mandalay Bay as a banquet bartender.

11. During the time Plaintiff was employed by Mandalay Bay she was sexually harassed by her co-worker Jesse Estrada (hereinafter "Estrada" or "Defendant Estrada").

12. Around 5:30 to 6:00 p.m. on Monday September 30, 2013 Robello was working at the South Seas banquet room "A" at the Mandalay Bay and as Plaintiff was taking six bottles of wine back to the beverage office she was approached by Defendant Estrada who put out his hands and said, "let me help you (ie. with the wine bottles)".

13. Instead of taking the wines bottles from Plaintiff, Estrada grabbed her breasts with his hands and then started laughing. This is not the first time that Estrada touched Robello without her consent.

14. Robello then moved away from Estrada and at the same time pushed Estrada away with her shoulder (because her hands were full), so he would remove his hands from her breasts and as she did, he continued to laugh. Estrada then took the wine bottles from Plaintiff.

15. Robello was shocked and offended by Defendant Estrada's behavior. Plaintiff felt like she had just been raped.

16. Plaintiff immediately reported what happened to the food captain Kirk Kilpatrick who told Robello to report it to the beverage supervisor on duty, which she did.

17. Robello was directed to write a statement on the incident by James Clare, which she did, which outlining what occurred. In addition the incident was caught on hotel surveillance video.

18. Robello believes that Defendant Estrada was also intoxicated from alcohol during the incident.

19. On October 1, 2013 Estrada was suspended pending investigation and on October 8, 2013 Defendant Estrada was terminated. Plaintiff was told by Clare that Estrada was

1 terminated because what Robello said in her written statement and what the surveillance video
2 showed.

3 20. Although Plaintiff tried to keep the incident strictly confidential, other employees
4 almost immediately knew what had happened and this led to Robello having to leave work early
5 on October 1, 2013 and missing work altogether on the 2nd, 3rd and 4th of October.

6 21. Plaintiff believes that the confidentiality of the incident was compromised by other
7 employees of Mandalay Bay which learned of the incident in confidence.

8 22. This was a truly traumatic experience for Plaintiff and led to constant crying
9 attacks, embarrassment, feeling violated, having nightmares about the incident and being unable to
10 sleep, among other things.

11 23. Then on November 2, 2013, to Plaintiff's shock and disbelief, and without her
12 consent or any warning from Mandalay Bay, Defendant Estrada was hired back by Defendant
13 Mandalay Bay and now works at the same workplace as Robello just like before.

14 24. This has led to Plaintiff continuing to suffer extreme emotional distress, mental
15 anguish and anxiety, among other things, knowing that every day she might see Defendant Estrada
16 and he might again violate her. In fact, on the day Estrada returned Plaintiff was so distraught that
17 she had to take the day off.

18 25. This has led Plaintiff to seek ongoing help from a psychologist so she can cope on a
19 day to day basis with the ongoing emotional distress and mental anguish she is experiencing from
20 the original incident with Estrada and his continued presence at the workplace.

21 26. Robello fears having to see Estrada daily, not knowing whether he will again get
22 the urge to sexually assault her.

23 27. Finally, after Plaintiff reported the sexual harassment, Robello began to experience
24 retaliation from various staff members, including but not limited to:

25 a. Other employees which Robello worked with started to act differently towards
26 her and making her feel like she acted improperly even though it Estrada who acted wrongly;

27 b. On October 21, 2013 Plaintiff received a written counseling notice for an
28

1 incident which happened on October 13, 2013 in which shop steward Darlene Cameron verbally
2 attacked Robello for something Plaintiff did not say or do;

3 c. On October 14, 2013 James Clare walked up to Plaintiff in front of several
4 employees and told her that her shirt was not proper for work because it had a logo on it, even
5 though she had worn a logo on her shirt before and even though other employees regularly wore
6 logos on their shirts; and

7 d. On February 28, 2014, Clare allowed another bartender to work the bar
8 Robello's was assigned even though she didn't agree with it, which violated a rule that the
9 bartenders in Plaintiff's department have that both bartenders have to agree with the change.

10 **FIRST CAUSE OF ACTION**

11 **(Hostile Environment Sexual Harassment in violation of Title VII)**

12 28. Plaintiff Robello incorporates the allegations set forth in paragraphs 1 through 27,
13 inclusive, as if fully set forth herein.

14 29. This cause of action is brought pursuant to Title VII as it involves a claim by
15 Plaintiff for "Hostile Environment" sexual harassment which is governed by Title VII.

16 30. As previously set forth herein above, Plaintiff was sexually harassed on September
17 30, 2013 by Defendant Estrada when he grabbed her breasts with his hands, which created a
18 "Hostile Environment" in the workplace for Robello.

19 31. Although Defendant Mandalay Bay did initially terminate Estrada on October 8,
20 2012 after investigating the incident and concluding that Estrada did in fact do what she said,
21 Mandalay Bay inexplicatively rehired Estrada less than a month later on November 2, 2013.

22 32. By doing so, Mandalay Bay breached their duty under the law to provide an
23 environment free of sexually harassment because among other things, once rehired, Estrada again
24 worked in the same workplace as Plaintiff and Robello again had to endure to the seeing Estrada at
25 work each day and fear that he might again violate her.

26 33. As a direct, foreseeable, and legal result of the sexual harassment set forth above,
27 Plaintiff was forced to leave work early on October 1, 2013 and miss work altogether on the 2nd,
28

1 3rd and 4th of October, in addition to missing work on November 2nd when Estrada was rehired
2 and thus has suffered loss of earnings in an amount to be proven at trial.

3 34. As a further direct, foreseeable, and legal result of the sexual harassment by Estrada
4 and Mandalay Bay's failure to provide a work environment free of sexual harassment, Plaintiff has
5 suffered crying attacks, embarrassment, feeling violated, having nightmares about the incident,
6 being unable to sleep, indignity, mental anguish, humiliation, emotional distress, nervousness,
7 tension, anxiety, recurring nightmares, depression, inconvenience and loss of enjoyment of life
8 and other pecuniary losses, the extent of which is not fully known at this time, for which she seeks
9 damages in an amount in excess of the minimum jurisdictional limits of the court, also to be
10 proven at the time of trial.

11 35. In acting as they did, Mandalay Bay knowingly, willfully, and intentionally acted in
12 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to
13 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a
14 sum according to proof at trial.

15 36. Plaintiff claims the damages alleged herein, together with prejudgment interest as
16 provided by law, in a sum according to proof at trial.

17 37. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
18 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to
19 proof at trial.

20
21 **SECOND CAUSE OF ACTION**

22 **(Title VII of the Civil Rights Act of 1964 -**

23 **Retaliation against Mandalay Bay)**

24 38. Plaintiff Robello incorporates the allegation set forth in paragraphs 1 through 37,
25 inclusive, as if fully set forth herein.

26 39. This cause of action is brought pursuant to Title VII as it involves a claim by
27 Plaintiff for retaliation which is governed by Title VII.

28 40. As set forth herein above, Plaintiff was retaliated against, for reporting Estrada's

1 conduct to Mandalay Bay. The retaliation has continued up to the present. On December 16,
2 2013 Robello filed a charge of discrimination with the EEOC which has further exacerbated the
3 retaliatory conduct of Mandalay Bay and its employees.

4 41. These action taken by Defendant Mandalay Bay against Plaintiff as discussed
5 above were as a direct result and in direct retaliation of Robello reporting the conduct of Estrada to
6 Mandalay Bay and filing the EEOC charge.

7 42. The retaliation Plaintiff experienced as set forth above were "adverse employment
8 actions" under Title VII and represented retaliation, as Mandalay Bay's actions were motivated by
9 Robello reporting the conduct of Estrada to Mandalay Bay and filing the EEOC charge.

10 43. As a direct, foreseeable, and legal result of Mandalay Bay's retaliation, Plaintiff has
11 suffered crying attacks, embarrassment, being unable to sleep, indignity, mental anguish,
12 humiliation, emotional distress, nervousness, tension, anxiety, recurring nightmares, depression,
13 inconvenience and loss of enjoyment of life and other pecuniary losses, the extent of which is not
14 fully known at this time, for which she seeks damages in an amount in excess of the minimum
15 jurisdictional limits of the court, to be proven at the time of trial.

16 44. In acting as they did, Defendant Mandalay Bay knowingly, willfully, and
17 intentionally acted in conscious disregard of Plaintiff's rights. Their conduct was despicable, has
18 subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in
19 favor of Plaintiff, in a sum according to proof at trial.

20 45. Plaintiff claims the damages alleged herein, together with prejudgment interest as
21 provided by law, in a sum according to proof at trial.

22 46. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
23 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to
24 proof at trial.

25 ///

26 ///

THIRD CAUSE OF ACTION

(Assault and Battery - against Estrada)

47. Plaintiff Robello incorporates the allegation set forth in paragraphs 1 through 46, inclusive, as if fully set forth herein.

48. Defendant Estrada's actions as set forth above caused both an apprehension of an un-consensual and unlawful touching and were in fact an un-consensual and unlawful touching, and thus constitute both assault and battery under Nevada Law.

49. These actions by Estrada caused severe emotional distress to Plaintiff including but not limited to, crying attacks, embarrassment, feeling violated, having nightmares about the incident, being unable to sleep, indignity, humiliation, nervousness, tension, anxiety, recurring nightmares and depression, the extent of which is not fully known at this time, for which she seeks damages in an amount in excess of the minimum jurisdictional limits of the court, to be proven at the time of trial.

50. In acting as he did, Defendant Estrada knowingly, willfully, and intentionally acted in conscious disregard of Plaintiff's rights. Estrada's conduct was despicable, has subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a sum according to proof at trial.

51. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.

52. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

FOURTH CAUSE OF ACTION

**(Intentional Infliction of Emotional Distress -
against Estrada)**

53. Plaintiff Robello incorporates the allegation set forth in paragraphs 1 through 52, inclusive, as if fully set forth herein.

54. Defendant Estrada's actions as set forth above constitutes extreme and outrageous conduct which was intended to cause severe emotional distress to Plaintiff.

55. Estrada's actions did in fact cause severe emotional distress to Plaintiff, including but not limited to, crying attacks, embarrassment, feeling violated, having nightmares about the incident, being unable to sleep, indignity, humiliation, nervousness, tension, anxiety, recurring nightmares and depression, the extent of which is not fully known at this time, for which she seeks damages in an amount in excess of the minimum jurisdictional limits of the Court, also to be proven at the time of trial.

56. In acting as he did, Defendant Estrada knowingly, willfully, and intentionally acted in conscious disregard of Plaintiff's rights. Estrada's conduct was despicable, has subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a sum according to proof at trial.

57. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.

58. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Robello demands judgment against Defendants Mandalay Bay and Estrada as follows:

Against Mandalay Bay:

1. For economic losses in the form of loss earnings according to proof at time of trial;
2. For compensatory damages for mental and emotional distress, worry, indignity, mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;
3. For punitive damages;

1 4. For attorney's fees and costs in an amount determined by the court to be reasonable,
2 pursuant to 42 USC §2000e-5(k);

3 5. For pre-judgment interest on all damages; and

4 6. For any other and further relief that the court considers proper.

5 Against Estrada:

6 7. For compensatory damages for mental and emotional distress, worry, indignity, mental
7 anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life, all to
8 Plaintiff's damage in a sum to be shown at the time of trial;

9 8. For punitive damages;

10 9. For attorney's fees and costs in an amount determined by the court to be reasonable;

11 10. For pre-judgment interest on all damages; and

12 11. For any other and further relief that the Court considers proper.

13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
15 jury in this action.
16

17
18
19 DATED: 3/26/2014

LAW OFFICES OF MICHAEL P. BALABAN

20
21 BY: 

22 Michael P. Balaban, Esq.
23 LAW OFFICES OF MICHAEL P. BALABAN
24 10726 Del Rudini Street
25 Las Vegas, NV 89141
26
27
28

EXHIBIT

A

DISMISSAL AND NOTICE OF RIGHTS

To: **Debra L. Robello**
9141 Intriguing Ave.
Las Vegas, NV 89149

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2014-00120

Jake B. DeMarco,
Investigator

(702) 388-5057

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

DEC 27 2013

Enclosures(s)



Amy Burkholder,
Local Office Director

(Date Mailed)

cc: **Nathan T.H. Lloyd, Esq.**
General Counsel – Labor / Employment
MANDALAY CORP. D/B/A MANDALAY BAY RESORT
& CASINO
4886 Frank Sinatra Rd.
Las Vegas, NV 89158

EXHIBIT 2

EXHIBIT 2

EEOC Form 5 (11-09)


CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 487-2014-00120	
Nevada Equal Rights Commission and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Ms. Debra L. Robello		Home Phone (incl. Area Code) (702) 981-3100 Date of Birth <div style="background-color: black; width: 100px; height: 20px;"></div>	
Street Address 9141 Intriguing Ave., Las Vegas, NV 89149		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name MANDALAY CORP. D/B/A MANDALAY BAY RESORT & CASINO		No. Employees, Members 500 or More Phone No. (include Area Code) (702) 632-7777	
Street Address 3950 Las Vegas Blvd., South, Las Vegas, NV 89119		City, State and ZIP Code	
Name		No. Employees, Members Phone No. (include Area Code)	
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest <div style="text-align: right;">09-30-2013</div> <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): In or around September 2001, I was hired by the Respondent as a Banquet Bartender. My current job title is Banquet Bartender. In or around September 2013, I was subjected to an unwelcomed, objectionable, and offensive physical contact (i.e., grabbing breasts) by employee, Jesse Estrada. I informed Respondent (i.e., Beverage Manager, James Clare, Union, and Human Resources). Respondent investigated and discharged Mr. Estrada. In or around November 2013, Respondent re-hired Mr. Estrada and has created a hostile work environment. I believe that I was discriminated against due to my sex, female, and retaliated against for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Dec 16, 2013 <small>Date</small>		<div style="text-align: center;">  <small>Charging Party Signature</small> </div> <div style="border: 1px solid black; padding: 5px; text-align: center; float: right; width: 200px;"> RECEIVED DEC 16 2013 LAS VEGAS LOCAL OFFICE </div>	

EXHIBIT 3

EXHIBIT 3

Instrument # 20090309100039640
Date 3/9/2009 Time Issued/Filed 3:44:18 PM
Issued/Filed
Document FFN Remarks
Type
Document Desc FFN CERTIFICATE
Pages 1
File/ID#

Business Mailing Address 3950 LAS VEGAS BLVD
SOUTH LAS VEGAS NV
89119

Business
Name

Seq	Firm	Name
1	Y	MANDALAY BAY RESORT & CASINO

Owner Name

Seq	Firm	Name
1	Y	MANDALAY CORP.

EXHIBIT 4

EXHIBIT 4

Instrument # 20140331100049780
Date Issued/Filed 3/31/2014 Time Issued/Filed 3:59:58 PM
Document Type FFN Remarks
Document Desc FFN CERTIFICATE
Pages 1
File/ID#

Business Mailing Address 3950 LAS VEGAS BLVD
SOUTH LAS VEGAS NV
89119

Business
Name

Seq	Firm	Name
1	Y	MANDALAY BAY RESORT & CASINO

Owner Name

Seq	Firm	Name
1	Y	MANDALAY CORP.

EXHIBIT 5

EXHIBIT 5

Morningstar[®] Document ResearchSM

FORM 10-K

MGM Resorts International - MGM

Filed: March 03, 2014 (period: December 31, 2013)

Annual report with a comprehensive overview of the company

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MGM Resorts International

By: /s/ JAMES J. MURREN

James J. Murren
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

Dated: February 28, 2014

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ JAMES J. MURREN	Chairman of the Board and Chief Executive Officer	February 28, 2014
James J. Murren	(Principal Executive Officer)	
/s/ ROBERT H. BALDWIN	Chief Design and Construction Officer and Director	February 28, 2014
Robert H. Baldwin		
/s/ DANIEL J. D'ARRIGO	Executive Vice President, Chief Financial Officer and Treasurer	February 28, 2014
Daniel J. D'Arrigo	(Principal Financial Officer)	
/s/ ROBERT C. SELWOOD	Executive Vice President and Chief Accounting Officer	February 28, 2014
Robert C. Selwood	(Principal Accounting Officer)	
/s/ WILLIAM A. BIBLE	Director	February 28, 2014
William A. Bible		
/s/ BURTON M. COHEN	Director	February 28, 2014
Burton M. Cohen		
/s/ WILLIE D. DAVIS	Director	February 28, 2014
Willie D. Davis		
/s/ MARY CHRIS GAY	Director	February 28, 2014
Mary Chris Gay		
/s/ WILLIAM W. GROUNDS	Director	February 28, 2014
William W. Grounds		

EXHIBIT 21

Subsidiaries of MGM Resorts International

<u>Subsidiary</u>	<u>Jurisdiction of Incorporation</u>	<u>Percentage Ownership</u>
Blue Tarp reDevelopment, LLC	Massachusetts	(1)
MGM Springfield reDevelopment, LLC	Massachusetts	100%
Destron, Inc.	Nevada	100%
MGM Grand (International), Pte Ltd.	Singapore	100%
MGM Resorts International Marketing, Inc.	Nevada	100%
MGM Resorts International Marketing, Ltd.	Hong Kong	100%
Sanya Investments Ltd.	Hong Kong	100%
M3 Nevada Insurance Company	Nevada	100%
Mandalay Resort Group	Nevada	100%
550 Leasing Company I, LLC	Nevada	100%
550 Leasing Company II, LLC	Nevada	100%
Circus Circus Casinos, Inc., <u>dba Circus Circus Hotel and Casino-Las Vegas, dba Circus Circus Hotel, and dba Casino-Reno and Slots-A-Fun Casino</u>	Nevada	100%
Diamond Gold, Inc.	Nevada	100%
Galleon, Inc.	Nevada	100%
Mandalay Corp., <u>dba Mandalay Bay Resort and Casino and TheHotel</u>	Nevada	100%
Mandalay Employment, LLC	Nevada	100%
Mandalay Place	Nevada	100%
MGM Resorts Festival Grounds, LLC	Nevada	100%
MGM Resorts Mississippi, Inc., <u>dba Gold Strike Casino Resort</u>	Mississippi	100%
M.S.E. Investments, Incorporated ("MSE")	Nevada	100%
Jean Development Company, LLC, <u>dba Gold Strike Hotel and Gambling Hall</u>	Nevada	100%
Jean Development North, LLC	Nevada	(2)
Jean Development West, LLC	Nevada	(3)
Jean Fuel Company West, LLC <u>dba Nevada Landing Auto Plaza</u>	Nevada	100%
Nevada Landing Partnership	Illinois	(4)
Railroad Pass Investment Group, LLC, <u>dba Railroad Pass Hotel and Casino</u>	Nevada	100%
Gold Strike Fuel Company, LLC <u>dba Gold Strike Auto & Truck Plaza</u>	Nevada	100%
Gold Strike L.V.	Nevada	(5)
Victoria Partners, <u>dba Monte Carlo Resort and Casino</u>	Nevada	(6)
New Castle Corp., <u>dba Excalibur Hotel and Casino</u>	Nevada	100%
Ramparts, Inc., <u>dba Luxor Hotel and Casino</u>	Nevada	100%
Vintage Land Holdings, LLC	Nevada	100%
Metropolitan Marketing, LLC	Nevada	100%
MMNY Land Company, Inc.	New York	100%
MGM Grand Detroit, Inc.	Delaware	100%
MGM Grand Detroit, LLC, <u>dba MGM Grand Detroit</u>	Delaware	(7)
MGM Grand Hotel, LLC, <u>dba MGM Grand Hotel & Casino</u>	Nevada	100%
Grand Laundry, Inc.	Nevada	100%
MGM Grand Condominiums, LLC	Nevada	100%
MGM Grand Condominiums II, LLC	Nevada	100%
MGM Grand Condominiums III, LLC	Nevada	100%
Tower B, LLC	Nevada	100%
Tower C, LLC	Nevada	100%
MGM Hospitality, LLC	Nevada	100%
MGM Hospitality Holdings, LLC	Dubai	100%
MGM Hospitality Development, LLC	Dubai	100%
MGM Hospitality Development, LLC	Abu Dhabi	100%
MGM MIRAGE Hospitality Management, LLC	Abu Dhabi	100%
MGM Hospitality International Holdings, Ltd.	Isle of Man	100%
MGM Resorts China Holdings Limited	Hong Kong	100%
MGM (Beijing) Hospitality Services, Ltd.	Beijing	100%

Subsidiary	Jurisdiction of Incorporation	Percentage Ownership
MGM Asia Pacific Holdings Limited	Hong Kong	100%
MGM China Holiday (Hangzhou Bay) Holdings Limited	Hong Kong	100%
MGM (HK) Cruise Investment Holdings Limited	Hong Kong	100%
MGM Hospitality India Private, Ltd.	India	100%
MGM International, LLC	Nevada	100%
MGM Resorts International Holdings, Ltd.	Isle of Man	100%
MGM China Holdings, Ltd.	Grand Cayman	(8)
MGM Macau, Ltd.	Isle of Man	100%
MGM Resorts Club Holdings, Ltd.	Hong Kong	100%
MGM Resorts Macau, Ltd.	Isle of Man	100%
MGM Resorts International Holdings II, Ltd.	Isle of Man	100%
MGM National Harbor, LLC	Nevada	100%
MGM Resorts Advertising, Inc.	Nevada	100%
VidiAd	Nevada	100%
MGM Resorts Aircraft Holdings, LLC	Nevada	100%
MGM Resorts Arena Holdings, LLC	Nevada	100%
MGM Resorts Development, LLC	Nevada	100%
MGM Resorts International Global Gaming Development, LLC	Nevada	100%
MGM Resorts International Operations, Inc.	Nevada	100%
MGM Resorts Land Holdings, LLC	Nevada	100%
MGM Resorts Macao, LLC	Nevada	100%
MGM Grand (Macao) Limited	Macau	100%
MGM Resorts Limited, LLC	Nevada	100%
Inspired, LLC	Maryland	100%
MGM Resorts Tier 1 Sub B, LLC	Nevada	100%
MGM Resorts Management and Technical Services, LLC	Nevada	100%
MGM Resorts Online, LLC	Nevada	100%
MGM Resorts Retail	Nevada	100%
OE Pub, LLC	Nevada	100%
MGM Springfield, LLC	Massachusetts	100%
MGMM Insurance Company	Nevada (insurance)	100%
Mirage Resorts, Incorporated	Nevada	100%
AC Holding Corp.	Nevada	100%
AC Holding Corp. II	Nevada	100%
Beau Rivage Resorts, Inc., <u>dba Beau Rivage</u>	Mississippi	100%
Bellagio, LLC, <u>dba Bellagio</u>	Nevada	100%
Bella Lounge, LLC	Nevada	(9)
Bungalow, Inc.	Mississippi	100%
LV Concrete Corp.	Nevada	100%
MAC, CORP.	New Jersey	100%
MGM Resorts Aviation Corp.	Nevada	100%
MGM Resorts Corporate Services	Nevada	100%
MGM Resorts International Design	Nevada	100%
MGM Resorts Manufacturing Corp.	Nevada	100%
MH, Inc., <u>dba Shadow Creek</u>	Nevada	100%
M.I.R. Travel	Nevada	100%
The Mirage Casino-Hotel, <u>dba The Mirage</u>	Nevada	100%
Mirage Laundry Services Corp.	Nevada	100%
Mirage Leasing Corp.	Nevada	100%
350 Leasing Company I, LLC	Nevada	100%
350 Leasing Company II, LLC	Nevada	100%
450 Leasing Company I, LLC	Nevada	100%
MRGS, LLC	Nevada	100%
Arena Land Holdings, LLC	Nevada	100%
Park District Holdings, LLC	Nevada	100%
Project CC, LLC	Nevada	100%
Aria Resort & Casino, LLC	Nevada	100%
CityCenter Facilities Management, LLC	Nevada	100%
CityCenter Realty Corporation	Nevada	100%
The Crystals at CityCenter Management, LLC	Nevada	100%
Vdara Condo Hotel, LLC	Nevada	100%
New PRMA Las Vegas, Inc.	Nevada	100%
New York-New York Hotel & Casino, LLC, <u>dba New York-New York Hotel &</u>		